

## Internal Revenue Service

Department of the Treasury  
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### Legend

Company =

TIN:

State =

A =

TIN:

Trust B =

TIN:

Trust C =

TIN:

Trust D =

TIN:

Trust E =

TIN:

D1 =

D2 =

D3 =

D4 =

D5 =

Dear \_\_\_\_\_ :

This letter responds to a letter dated February 2, 2012, submitted on behalf of Company, requesting a ruling under 1362(f) of the Internal Revenue Code.

The information submitted states that Company was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. The Shareholders of Company are A, an individual who is a citizen and resident of the United States, Trust B and Trust C, trusts all of which are treated as owned by B and C, respectively, individuals who are citizens and residents of the United States, and Trust D, Trust E.

Trust D acquired Company stock on D3. Company represents that Trust D was eligible to be an electing small business trust ("ESBT") within the meaning of § 1361(e) effective D3 and thereafter. However, the trustee of Trust D did not make a timely ESBT election under § 1361(e)(3). Therefore, Trust D was not a permissible shareholder on D3 and thereafter. As a result, Company's S corporation election terminated on D3.

Trust E was a qualified shareholder of an S corporation pursuant to § 1361(c)(2)(A)(i) from D2 until D4. On D4, the deemed owner of Trust E died, and Trust E remained an eligible shareholder until D5 pursuant to § 1361(c)(2)(A)(ii). Company represents that Trust E was eligible to be an ESBT within the meaning of § 1361(e) effective D5 and thereafter. However, the trustee of Trust E did not make a timely ESBT election under § 1361(e)(3). Therefore, Trust E was not a permissible shareholder on D5 and thereafter.

Company represents that Company and Shareholders have filed tax returns consistent with Company being an S corporation since D3. Company further represents that the circumstances resulting in the termination of Company's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. Company and Shareholders have agreed to make any adjustments the Commissioner may require, consistent with the treatment of Company as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the

corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we conclude that Company's S corporation election terminated on D3. We also conclude that this termination was inadvertent within the meaning of § 1362(f). In addition, to the extent Company's S corporation election would have terminated on D5, we conclude that such termination was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), Company will be treated as continuing to be an S corporation from D3, and thereafter, unless Company's S corporation election is otherwise terminated under § 1362(d), provided Trust D files an ESBT election effective D3 and Trust E files an ESBT election effective D5 with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the ESBT elections.

The Shareholders of Company must include their pro rata share of the separately stated and nonseparately computed items of income, loss, deduction, or credit as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by Company as provided in § 1368. This ruling is contingent upon Company and each of its Shareholders filing any amended returns and making such adjustments that are necessary to properly reflect the reporting of Company's items of S corporation income. Additionally, Trust D and Trust E must file any amended returns and make adjustments that are necessary to properly reflect the treatment of Trust D and Trust E as ESBTs.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

If all of the above conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, Company must notify the Cincinnati Service Center that its S corporation election has terminated.

Except for the specific rulings above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is express or implied regarding the eligibility of Company to be an S corporation or the eligibility of Trust D or Trust E to be an ESBT.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the

material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representative.

Sincerely,

Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes

cc: